IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY 16TH OCTOBER / 24TH ASWINA 1929

LA.App..No. 21 of 2002(A)

APPELLANT: /CLAIMANT:

BEENA LOVELY, W/O. LOVELY THOMAS,
KUTTANPEROOR CHAKKLAYIL, VAZHAPPALLY EAST VILLAGE,
CHANGANACHERRY.

BY ADV. SRI.RAJEEV V.KURUP

RESPONDENTS: /RESPONDENT:

STATE OF KERALA REPRESENTED BY
DISTRICT COLLECTOR, KOTTAYAM.

BY ADDL.ADVOCATE GENERAL

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON28-09-2007 , THE COURT ON 16-10-2007 DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, J.J

L.A.A No. 21 of 2002

Dated this the day of September 2007

JUDGMENT

Harun-Ul-Rashid,J.

The appeal is filed by the claimant against the decree and judgment dated 26-6-1002 in L.A.R. 133 of 1998 on the file of the Principal Sub judge, Kottayam . An extent of 0.0260 hectares of land in Survey No.14/151 of Vazhappally East village was acquired by the Government for the Changanassery Bye-pass . Notification under Section 4(1) of the Land Acquisition Act was published on 16-3-1995. The Land Acquisition Officer awarded land value at the rate of Rs. 41,167/- per are. At the instance of the claimant the matter was referred to the reference court for considering the claim for enhancement.

2. In support of the claim, AWs1 & 2 were examined. A1 to A5 were marked. The Land acquisition officer categorised the land into 7 categories as category No. A to G. The Land under acquisition in this case was included in D category. Ext.A1 is the common judgment in L.A.R 131/1998. Ext.A1 judgment is in relation to the land acquired for the same purpose. Relying on Ext.A1 judgment the court below held that the claimant is entitled to land value at the rate of 35,000 per cent.

3. The claimant contended before this court that no compensation was awarded for the balance extent remaining with him.

According to him out of the total extent of 4 are of land 2.6 ares was acquired and he is entitled to compensation for the balance land for injurious affection. He also claimed that Rs. 15,000 granted towards for the cost of construction of the compound wall is too low. He also contended that the mahazar prepared by the Land Acqusition Officer shows that there are 40 teak trees, 6 Mahagoni trees and 7 yielding coconut trees in the acquired land and that the court below failed to award any compensation towards the timber value of the aforesaid trees.

4. We have examined the contentions of the claimant and we are of the view that the land value at the rate 35, 000 per cent fixed by the court below on the basis of Ext.A1 judgment is fair and reasonable. At the same time, to consider the question whether the claimant is further entitled to the timber value of the trees mentioned above and the adequacy of the amount awarded for the construction of the compound wall, a further consideration of the matter by the court below is necessitated. In the light of the aforesaid observations we set aside the decree and judgment passed by the court below and remand the case for re-determination of the compensation on the heads stated above. The claimant is entitled to interest on solatium for the amount already re-fixed as compensation

KURIAN JUSEPH , JUDGE

HARUN-UL-RASHID, JUDGE

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